

1 VELIKANJE HALVERSON, P.C.
2 Carter L. Fjeld
3 P.O. Box 22550
4 Yakima, WA 98907
5 509-248-6030
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So Ordered.



Frank L. Kurtz
Bankruptcy Judge

Dated: September 28th, 2012

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

IN RE:)
) **NO. 08-01741-FLK7**
ARMEN L. WEISHAAR)
Debtor,) **Adversary No.: 08-80066**
)
)
SCOTT MACDONALD and) **FINDINGS OF FACT AND**
KEN MYER,) **CONCLUSIONS OF LAW**
)
Plaintiff,)
)
Vs.)
)
ARMEN L. WEISHAAR)
)
Defendant.)

This matter having come on regularly on motion of Plaintiffs for
Summary Judgment against Defendant and Defendant choosing to not contest
Plaintiffs' motion and the court having reviewed the files and records herein to
include without limitation, the Certified Statement of Ken Myer, the Court does
herewith make the following:

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FINDINGS OF FACT

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3 1. At Mr. Weishaar's request Plaintiffs established a checking account and
4 savings account at Wells Fargo Bank (WFB) with Mr. Weishaar as one of the three
5 signatories on each account.
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7 2. The only funds deposited to the WFB accounts were those belonging to
8 the Plaintiffs. Mr. Weishaar deposited nothing to those accounts.
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10 3. The funds deposited into the WFB accounts were for the sole agreed
11 upon purpose of acquiring foreclosure properties at foreclosure sales in the names of
12 Plaintiffs.
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14 4. Mr. Weishaar was granted the limited authority to access funds in the
15 WFB accounts solely for the purpose of acquiring foreclosure properties at
16 foreclosure sales in the names of Plaintiffs.
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18 5. Mr. Weishaar had agreed with Plaintiffs that he would only use the
19 funds in the WFB accounts for the purpose of acquiring foreclosure properties at
20 foreclosure sales in the names of Plaintiffs.
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22 6. Mr. Weishaar used the above referenced accounts on at least four
23 occasions for withdrawals of a total of \$75,000.00 without prior approval of Plaintiffs
24 and used the funds withdrawn for his personal purposes and not for the purposes of
25 acquiring foreclosure properties at foreclosure sales in the names of Plaintiffs as
26 previously agreed to.
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35 7. The unauthorized withdrawals by Mr. Weishaar were as follows:

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<u>Date of Withdrawal</u>	<u>Amount</u>	<u>To Whom Paid</u>
April 16, 2007	\$20,000.00	Personal Withdrawal at Wells Fargo Bank in Kennewick
May 3, 2007	\$15,000.00	Electronic Transfer to Weishaar Account
May 8, 2007	\$20,000.00	Electronic Transfer to Weishaar Account
July 17, 2007	<u>\$20,000.00</u>	Electronic Transfer to Weishaar Account
Total:	\$75,000.00	

8. Mr. Weishaar has failed to account to Plaintiffs for any of said withdrawals.

CONCLUSIONS OF LAW

1. The funds deposited by Plaintiff's into their WFB accounts to which they granted Mr. Weishaar access constituted trust funds.

2. Mr. Weishaar's position of trust as to the funds in the WFB accounts made him a trustee of those accounts with fiduciary responsibility to Plaintiffs for all of his activities with respect to such funds.

3. Plaintiff's reliance on Mr. Weishaar's representations in regard to his agreed to limited access to and use of the funds in the WFB accounts were material and were rightfully relied upon by the Plaintiffs.

4. Defendant Weishaar intended for Plaintiffs to rely upon his representations in order to receive access to Plaintiffs' bank account.

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1 5. The representations by Mr. Weishaar that he would use such funds for
2 the limited purposes described were false and the Plaintiffs did not know the falsity of
3 the representations at the time they gave Mr. Weishaar access to their bank account.
4

5 6. Plaintiff's were damaged as a result of Defendant's fraudulent action.
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7 7. Such actions on the part of the Defendant constitute fraud, defalcation,
8 embezzlement and/or larceny while acting in a fiduciary capacity and such debt
9 obligations evidenced above are non-dischargeable pursuant to the provisions of 11
10 U.S.C. 523 (a)(4) .
11
12

13 8. That the debt of Defendant in the principal sum of \$75,000.00 is non-
14 dischargeable.
15

16 //End of Order//
17
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19 Presented by:
20

21 VELIKANJE HALVERSON P.C.
22 Attorneys for Plaintiff
23

24 /S/_____
25 Carter L. Fjeld, WSBA 11290
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